

<p style="text-align: right;">Page 73</p> <p>1 this particular fishing vessel due to dirty water</p> <p>2 when he went to wash his hands, so I went aboard the</p> <p>3 vessel and took a sample of the water.</p> <p>4 Q That would be a type of investigation assignment?</p> <p>5 A Yes.</p> <p>6 Q Roland Caron?</p> <p>7 A Yes.</p> <p>8 Q Were you an expert witness in that case?</p> <p>9 A Yes.</p> <p>10 Q What type of case was that?</p> <p>11 A Mr. Caron was a crew member aboard a dragger from</p> <p>12 Portland, Maine, and it was involving operation on</p> <p>13 the deck and they had hauled back a small whale and</p> <p>14 they were trying to get the whale off the vessel and</p> <p>15 in the act of trying to get the whale off the</p> <p>16 vessel, Mr. Caron suffered a shoulder injury.</p> <p>17 Q What was your area of expertise in that case?</p> <p>18 A Good, general safe practices on work decks.</p> <p>19 Q Did you have an opinion in that case that Mr. Caron</p> <p>20 was negligent in his own conduct?</p> <p>21 A I believe I testified that contributing to the</p> <p>22 incident was the fact that he placed himself under a</p> <p>23 suspended heavy load without taking proper</p> <p>24 precautions before climbing under the load or</p>	<p style="text-align: right;">Page 75</p> <p>1 A Hoist it overboard, yes.</p> <p>2 Q So they threw the rope around it, grabbed the cargo,</p> <p>3 lifted it up, he went underneath it, rope came</p> <p>4 undone, the whale landed on him?</p> <p>5 A That's correct.</p> <p>6 Q Did you have an opinion whether there was anything</p> <p>7 wrong with what the boat did in the Caron case that</p> <p>8 contributed to Mr. Caron's injury?</p> <p>9 A I don't recall all of the testimony. I recall the</p> <p>10 basic facts, and that's what happened. I don't</p> <p>11 recall the specific testimony.</p> <p>12 Q Do you know what type of winch was used on the</p> <p>13 vessel involved in the Caron case?</p> <p>14 A It was a mechanical hydraulic winch, and they used a</p> <p>15 smaller winch, take-out winch, and I don't recall</p> <p>16 the specifics.</p> <p>17 Q Do you know if the main winch in the Caron case was</p> <p>18 the Marco winch?</p> <p>19 A It wasn't a Marco winch.</p> <p>20 Q Was the main winch in the vessel in the Caron case a</p> <p>21 Marco winch?</p> <p>22 A I don't recall.</p> <p>23 Q Michael Richards, what was that case about? Who was</p> <p>24 the plaintiff's attorney in Roland Caron?</p>
<p style="text-align: right;">Page 74</p> <p>1 standing under the load.</p> <p>2 Q Was the load being the small whale?</p> <p>3 A Yes.</p> <p>4 Q What was the name of the vessel in the Roland Caron</p> <p>5 case?</p> <p>6 A I don't recall.</p> <p>7 Q Do you know when you testified in that case?</p> <p>8 A Yes, I testified in October of 2004 at trial, and in</p> <p>9 July of 2004 I gave a deposition before the trial.</p> <p>10 Q So you testified twice in that case?</p> <p>11 A Deposition was taken like today and eventually it</p> <p>12 did go to trial and I testified at trial.</p> <p>13 Q Did the load, the bag of the net, did it drop in</p> <p>14 that case on top of Mr. Caron, at least --</p> <p>15 A The pilot whale slipped out of the noose which he</p> <p>16 had placed around the whale, and the whale hit him</p> <p>17 and knocked him to the deck.</p> <p>18 Q They put a noose around the whale which was inside a</p> <p>19 bag?</p> <p>20 A Not, it was on deck. It was outside of the bag.</p> <p>21 Q How did they get the whale on deck?</p> <p>22 A It came up in the bag, but they dumped it on the</p> <p>23 deck. And they were trying to --</p> <p>24 Q -- hoist it overboard?</p>	<p style="text-align: right;">Page 76</p> <p>1 A I don't recall. Somebody in Maine.</p> <p>2 Q Who was the defense attorney in the Caron case?</p> <p>3 A I think was Attorney Michael Sabasek.</p> <p>4 Q Michael Richard, what was that case about?</p> <p>5 A I don't recall.</p> <p>6 Q Says you gave deposition testimony in June of '04.</p> <p>7 Does that ring a bell?</p> <p>8 A No, I don't recall that case without looking at the</p> <p>9 file folder to refresh my memory.</p> <p>10 Q Do you have a memory at all as to what it might have</p> <p>11 been about?</p> <p>12 A No.</p> <p>13 Q Says 4-4 of '04 the CAPE FEAR case?</p> <p>14 A I believe that was with you.</p> <p>15 Q That involved the sinking of a clam vessel?</p> <p>16 A Yes.</p> <p>17 Q In that case you were testifying on behalf of the</p> <p>18 defendant?</p> <p>19 A Yes.</p> <p>20 Q What was your area of expertise in the CAPE FEAR</p> <p>21 case?</p> <p>22 A Fishing vessel safety, and also it was more factual,</p> <p>23 it had to do with the findings of the safety</p> <p>24 equipment that I inspected after the accident.</p>

19 (Pages 73 to 76)

<p style="text-align: right;">Page 77</p> <p>1 Q You would agree in the CAPE FEAR case you inspected 2 survival suits -- 3 A Yes. 4 Q -- after sinking? 5 A Yes. 6 Q And that was the sinking that involved the death of 7 two individuals? 8 A Yes. 9 Q And you found that the survival suits were 10 functioning properly, correct? 11 A At the time of my inspection at the coast guard 12 office I found that the survival suit zippers 13 functioned properly. 14 Q And that was immediately after coast guard personnel 15 and their inspection found that the survival suits 16 were not functioning properly, is that correct? 17 A I don't think "immediately" would be accurate. It 18 was sometime after. 19 Q But at least in the CAPE FEAR case coast guard 20 inspected equipment after the casualty, correct? 21 A Are you asking my recollection of that? 22 Q Yes. 23 A Yes, my recollection is that the coast guard had 24 recovered two survival suits and they were taken</p>	<p style="text-align: right;">Page 79</p> <p>1 Q L/B ORIN C? 2 A What's an arbitration involving a collision between 3 two vessels, and my testimony involved rules of the 4 road, safe navigation. 5 Q While of vessels were involved? 6 A L/B ORIN C is a wooden lobster boat and the other 7 vessel was a fiberglass charter fishing boat. 8 Q Why was it an arbitration as opposed to a normal 9 lawsuit? 10 A You would have to ask the attorneys why they chose 11 arbitration. I think to save time and money. 12 Q Wayne Arnold case, what was your area of expertise? 13 A Navigation and rules of the road. 14 Q I'm sorry? 15 A Wayne Arnold was the case where they pulled his 16 license. Involved a collision between a motor boat 17 and a personal water craft. 18 Q Did they want to pull this guy's license or 19 something? 20 A No, no, it was the person riding the personal water 21 craft died in the collision, and I was asked to 22 review. They happened to have videotape of the 23 incident that someone from shore had taken, and I 24 was asked to testify before a judge in Rhode Island</p>
<p style="text-align: right;">Page 78</p> <p>1 into custody by the coast guard marine safety office 2 in Providence, and I was asked to attend, visit the 3 office. I got permission to conduct my own 4 inspection, and I conducted my own inspection. 5 Q Your own inspection was conducted after the coast 6 guard personnel conducted -- 7 A Sometime after. 8 Q You are aware at the time of your inspection that 9 the coast guard found that the survival suit was not 10 functioning properly? 11 A Correct. 12 Q And your findings were that the survival suit was 13 functioning properly? 14 A I found at the time of my inspection they were 15 functioning properly, and I was in the presence of a 16 coast guard officer when I did that. 17 Q Wayne Arnold case, what was that about? 18 A That I believe was a hearing on a collision case in 19 Rhode Island. 20 Q Were you an expert witness in that case? 21 A I believe so. 22 Q Who were you working for at the time? 23 A I think that case, my recollection I was working for 24 Attorney Richard Humpheries.</p>	<p style="text-align: right;">Page 80</p> <p>1 as to how I interpreted the sequence of events in 2 the collision. 3 Q Who asked you? 4 A Attorney Humpheries. 5 Q Okay. Then you gave testimony. Was it in a coast 6 guard hearing? 7 A No, it was a, I don't know what you call it, state 8 court before a magistrate or judge. 9 Q Was it a criminal matter or criminal? 10 A I think it was potentially a criminal matter, and it 11 was the purpose of the hearing, to determine -- 12 Q -- whether to bring a charge or not? 13 A Yes. 14 Q Promet -- 15 A He was a potential criminal defendant and the issue 16 was do we charge this guy or not. 17 Q His lawyer hired you to interpret certain videotape? 18 A I believe that is what it was. The judge was asking 19 all the questions. 20 Q Promet, what was that case about? 21 A Promet is a case involving the methodology, 22 definition and practice of the terms "gross tonnage" 23 versus "net tonnage" and the custom and practice and 24 how that all evolved. Promet is a shipyard in Rhode</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 Island, and they were seeking relief from the state 2 of Rhode Island Tax Court involving how much tax 3 they had paid on bottom paint for fishing vessels. 4 And the state law I believe said that they were 5 basing the amount of tax on tonnage, and it was 6 unclear what tonnage they were using, so I was asked 7 to testify before an arbitrator or state tax 8 arbitrator as to the definition of gross registered 9 tonnage, net tonnage, dead weight tonnage what the 10 difference was. 11 Q Who hired you? 12 A Promet. 13 Q Their attorney -- 14 A Promet hired me, and they were represented by a tax 15 attorney or accountant. I'm not sure what his 16 function was. 17 Q The initial request came from Promet? 18 A Yes. 19 Q James McElroy, what was that case about? 20 A I don't recall. 21 Q 3-26-03 you testified at trial. 22 A I don't recall what that was. 23 Q You have no memory what the James McElroy case was? 24 A No.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q I show you a document that we're going to mark as 2 Exhibit 7. Do you recognize that document? 3 A It appears to be the affidavit that I prepared in 4 February of 2006. 5 Q Look through it and make sure it's accurate, and you 6 can crossreference it to make sure it's in your file 7 if you would like. 8 A Exhibit 7. 9 Q Did you have an opportunity to review what has been 10 marked as Exhibit No. 7 in this deposition? 11 A Yes. 12 Q Is Exhibit No. 7 in this deposition a copy of any of 13 the affidavits that we've gone through so far? 14 A Yes. 15 Q What is it a copy of? 16 A Exhibits 3 and 4. 17 Q Directing your attention to paragraph 5, says, "I am 18 familiar with the facts surrounding the injury to 19 Mr. Carlos Aguiar." Do you see that? 20 A Yes. 21 Q What are the facts surrounding the injury of Carlos 22 Aguiar as you understand it to be? 23 A Basically on the date of his incident they were in 24 the VESSEL MY WAY was in the process of hauling back</p>
<p style="text-align: right;">Page 82</p> <p>1 Q Michael Smolinski, what was that case about? 2 A I don't recall. 3 Q That was testifying in an arbitration in January of 4 '03? 5 A Yes. 6 Q GOLDEN NUGGET case. 1-6-03, it was a deposition. 7 A Yes. 8 Q Do you know what that was about? 9 A No, I don't. 10 Q Were you an expert witness in the Golden Nugget 11 case? 12 A I don't think so, but I don't recall. I think it 13 had to do something with damages suffered by a 14 vessel and giving testimony as to the extent of 15 damages, but I don't recall. I'd have to pull that 16 file from 2002. 17 Q What about the Smolinski? 18 A I don't recall what that was. 19 Q Same is true with McElroy? 20 A I'd have to pull those files. They go back to 2000. 21 THE WITNESS: Can I take a short break. 22 MR. ANDERSON: Yes. 23 [Recess] 24 [Exhibit 7 marked for identification]</p>	<p style="text-align: right;">Page 84</p> <p>1 the nets which are attached to the fishing vessel 2 trawl doors. We call them doors, D O O R S. 3 Mr. Aguiar was the deckman, and his job was to work 4 on the work deck near the gallus frames and the 5 doors to transfer the wires from the doors to the 6 net drum, secure the doors and, in preparation for 7 bringing the fish aboard and then in preparation for 8 resetting the doors after they dumped the load of 9 fish that they haul up. He was in the process of 10 securing a safety chain on the port side gallus to 11 the port side door when he, due to a combination of 12 things, he, his right index finger became struck or 13 caught or involved with the hook on the safety wire 14 and suffered an injury to his right index finger. 15 Q What is your understanding of the mechanism of 16 injury? 17 A My understanding of mechanism of injury is while he 18 was in the process of putting the pelican safety 19 hook around the chain, the vessel was rolling and 20 the chain came taught and his hand got struck due to 21 the mechanism of the chain and the door moving, the 22 chain came taught and the hook on the pelican hook 23 had not been fully secured and it snapped open and 24 struck him in the right index finger.</p>

21 (Pages 81 to 84)